

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #02	CCRB Case #: 201905473	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/22/2019 6:45 AM	Location of Incident: § 87(2)(b)	18 Mo. SOL 8/8/2021	Precinct: 50		
Date/Time CV Reported Mon, 06/24/2019 8:52 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/24/2019 8:52 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			050 PCT
2. SGT Michael Smith	02136	946270	050 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Stephen Dietrich	09740	960461	050 PCT
2. POF Jessica Caruccicook	08902	964427	050 PCT
3. POM Daniel Deloatch	27631	928177	050 PCT
4. POM Christophe Knitter	03676	952941	050 PCT
5. POM Brian Wolvers	28598	946399	050 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Michael Smith	Abuse: Sergeant Michael Smith threatened § 87(2)(b) s, dog with the use of force.	
B.SGT Michael Smith	Abuse: Sergeant Michael Smith threatened § 87(2)(b) , with the use of force.	
C.SGT Michael Smith	Abuse: Sergeant Michael Smith entered § 87(2)(b) , in the Bronx.	
D.SGT Michael Smith	Abuse: Sergeant Michael Smith threatened to arrest § 87(2)(b)	
E. An officer	Abuse: An officer threatened to arrest § 87(2)(b)	

Case Summary

§ 87(2)(b) filed the following complaint on June 24, 2019.

On June 22, 2019, at approximately 6:45 AM, officers responded to § 87(2)(b) residence located at § 87(2)(b) § 87(2)(b), in the Bronx. With his dog nearby § 87(2)(b) § 87(2)(b), opened his door to find Sergeant Michael Smith (of the 47th Precinct) in the hallway with several other officers. Sergeant Smith proceeded to advise § 87(2)(b) that he had violated the terms of an order of protection that barred him from communicating with his upstairs neighbor. § 87(2)(b) denied doing so and refused to comply when Sergeant Smith asked him to secure his dog and step outside. In response, Sergeant Smith stated, “Your dog is going to end up getting killed - you really want me to shoot your dog in front of you?”

(Allegation A: Abuse of Authority – Threat of Force, § 87(2)(g) Sergeant Smith also allegedly threatened to shoot § 87(2)(b) **(Allegation B: Abuse of Authority – Threat of Force,** § 87(2)(g) Further investigation revealed that it was § 87(2)(b) s adult son, § 87(2)(b), who had violated the order of protection. Upon confirming that § 87(2)(b) § 87(2)(b), was present inside the apartment, Sergeant Smith directed his officers to enter the premises to arrest him **(Allegation C: Abuse of Authority – Premises Entered,** § 87(2)(g) When § 87(2)(b) attempted to prevent the officers from doing so, Sergeant Smith and another officer threatened to arrest him **(Allegations D, E: Abuse of Authority – Threat of Arrest,** § 87(2)(g) § 87(2)(b) was ultimately taken into custody without further incident (Board Review 10). No one else was arrested or summonsed.

Body-worn camera (BWC) footage of the incident was obtained from the cameras of Sergeant Smith, Police Officer Christopher Knitter, Police Officer Stephen Dietrich, Police Officer Michael Smith, and Police Officer Jessica Caruccicook (Board Review 03 – 08).

Findings and Recommendations

Allegation (A) – Abuse of Authority: Sergeant Michael Smith threatened § 87(2)(b) s dog with the use of force.

Allegation (B) – Abuse of Authority: Sergeant Michael Smith threatened § 87(2)(b) s, with the use of force.

Allegation (C) – Abuse of Authority: Sergeant Michael Smith entered § 87(2)(b) s, in the Bronx.

§ 87(2)(b) s, was interviewed on June 28, 2019 (Board Review 01). Sergeant Smith was interviewed on September 19, 2019 (Board Review 02). § 87(2)(g)

On June 22, 2019, at approximately 6:45 AM, Sergeant Smith and approximately five other officers responded to § 87(2)(b) s, apartment after his upstairs neighbor called 911 to report that § 87(2)(b) had violated the order of protection that he had against him. Because the officers initially believed that the violator was § 87(2)(b) Sergeant Smith first engaged him through the open door, advised him of the neighbor’s complaint, and stated that he had to take him into custody.

As Sergeant Smith’s BWC footage shows (Board Review 03, beginning at 02:00), § 87(2)(b) § 87(2)(b) denies the violation and tells the officers to “go and get a warrant if you want

me.” When § 87(2)(b) then refuses to secure the dog and surrender himself, Sergeant Smith states, “Your dog is going to end up getting killed.” (Board Review 03, at 02:47) When § 87(2)(b) tells him to “Do what you gotta do,” Sergeant Smith states, “You really want me to shoot your dog in front of you, that’s really what you want?” (Board Review 03, at 02:47)

Over the next several minutes, after conferring with the neighbor, the officers come to determine that the subject of the order of protection is in fact § 87(2)(b), who emerges from the rear of the apartment at about the same time. Sergeant Smith eventually gains the cooperation of § 87(2)(b)s, wife, and she agrees to take the dog to the rear. After confirming that the dog is secure, Sergeant Smith then pushes the door open and steps aside to let the officers enter, stating, “Here you go.” (Board Review 03, 04:20 – 04:30) He later tells § 87(2)(b), “We don’t need a warrant to make an arrest – for this type of thing, if there is already a court order, that’s how it works.” (Board Review 03, 09:30 – 09:40)

Subsequently, after the officers enter and remove § 87(2)(b) § 87(2)(b), continues to challenge the legality of the police action and takes issue with Sergeant Smith’s threat to kill his dog. This prompts Sergeant Smith to clarify his remark by stating, “I said we have to come in - and if we come in and the dog attacks us - I don’t want to do that, I don’t want to shoot your dog.” The dog only appears on the officers’ BWCs at three moments (Board Review 03, at 01:46, 03:40, 04:22) and each view is too passing and partial for any further description. The footage shows the dog barking exactly once during the incident, when Sergeant Smith first arrives outside the apartment (Board Review 03, at 01:33).

§ 87(2)(g)

§ 87(2)(g)

Regarding his remarks about the dog, Sergeant Smith stated that he intended to persuade § 87(2)(b) to secure the dog, as a safety measure in case it proved to be a threat. He did not articulate a reason for this concern and did not suggest that the dog – which he described as a medium-sized Pitbull, and as lying on the ground near § 87(2)(b) – was an imminent threat at any point. Sergeant Smith acknowledged that he directed his officers to enter the apartment to arrest § 87(2)(b). He stated that he had the legal authority to do so even without an arrest warrant – that he had probable cause to believe that § 87(2)(b) had violated the order of protection, and that the violation alone was the functional equivalent of an arrest warrant (Board Review 02).

Absent exigent circumstances or a warrant for arrest, police officers may not enter a private residence to effectuate an arrest, even when there is probable cause to do so (Board Review 11, *Payton v New York*, 445 US 573 [1980]).

Per Patrol Guide (P.G.) Procedure 221-01, all use of force must be objectively reasonable under the circumstances (Board Review 12). P.G. Procedure 214-33, dealing with dangerous animals, states: “The use of physical force against any animal will be used ONLY to the extent that such force is necessary to prevent harm or injury to such animal, other animals, or persons...” P.G. 214-33 further states: “[Officers] shall not discharge a firearm at a dog or other animal, [except to protect] from imminent physical injury and there is no opportunity to retreat or other reasonable means to eliminate the threat. Before using deadly physical force, every attempt will be made to use other reasonable means to contain threats from dangerous animals.” (Board Review 13)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) – Abuse of Authority: Sergeant Michael Smith threatened to arrest § 87(2)(b).

§ 87(2)(b):

Allegation (E) – Abuse of Authority: An officer threatened to arrest § 87(2)(b).

The BWC footage shows that soon after the entry, Sergeant Smith and an unidentified officer threatened to arrest § 87(2)(b).

Police Officer Deloatch's BWC shows him as the first officer to enter the premises. As he proceeds further into the apartment toward § 87(2)(b), § 87(2)(b) – who is already standing up – steps between the two and obstructs his way forward with an extended arm. At this time, Sergeant Smith states, "Come on man - you are going to get arrested too." Another officer says, "Dude you are going to get arrested too." § 87(2)(b), steps aside almost immediately (Board Review 03, 07:00 - 07:05 and Board Review 04, 15:02 - 15:38).

While § 87(2)(b), did not allege the threats of arrest, he acknowledged that he extended his arm outward from a seated position to prevent the officers from entering.

Sergeant Smith reviewed the relevant BWC footage and acknowledged that the remarks in question were directed at § 87(2)(b), when he tried to "get in the way" of the arrest.

Per New York Penal Law §195.05, a person is guilty of obstructing governmental administration (OGA) when he intentionally obstructs the administration of law or prevents or attempts to prevent a public servant from performing an official function, by means of physical force or interference (Board Review 14).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) ., has been a party to one prior CCRB complaint in which he was named as a victim of four allegations: § 87(2)(b)
- Sergeant Smith has been a member of service for 12 years and has been a subject in one other CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) ., declined to mediate this complaint.
- As of February 13, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 16).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 2

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date